IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

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WRIT PETITION NO : 22103 of 2004

Between:

V. Ganesh Kumar D.No. 38-35-3,

Ranapratap Nagar, Marripalem, Visakhapatnam.

..... PETITIONER

AND

The Municipal Commissioner,

Municipal Corporation of Visakhapatnam,

Municipal Corporation Buildings, Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in interfering with the construction of the building of petitioner as highly arbitrary, illegal and violation of Article 14 of Constitution of India and consequentially direct the respondent to consider and dispose of his explanation dated 20.11.2004 in respect of the building of the petitioner situated at House No. /Plot No.38-35-3, 38-35-7, T.S.No.Ward No.42, Ranapratapnagar, Marripalem, Visakhapatnam .

Counsel for the Petitioner:MR.T.M.K.CHAITANYA

Counsel for the Respondent: MR.T.S.VENKATARAMANA

The Court at the admission stage made the following :

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ORDER:

This writ petition is filed to declare the action of the respondents in interfering with the construction of the building of petitioner as arbitrary and illegal and to direct the respondent to consider and dispose of his explanation dated 20-11-2004 in respect of building of the petitioner bearing Plot No.38-35-3 to 38-35-7, T.S.Ward. No. 42 Ranapratapnagar, Marripalem, Visakapatnam.

The petitioner submits that he and his wife purchased land of 996 square yards from different vendees situated at Ranapratapnagar, Marripalem, Visakhapatnam and the same was registered. The petitioner is imparting education to those who are interested to join the defence forces since 1994. The petitioner wants to construct a residential building and applied for approval of plan and the same was approved vide proceedings dated 4-3-2004 consisting of ground plus first and second floors.

While construction is in progress, it is the case of the petitioner that the staff of the respondent is causing obstructions to the construction work and threatening to demolish the structures that were already built. There are no deviations, which are affecting public interest. The petitioner also intimated about the construction before commencement of the construction to the respondent, but the staff of the respondent came to the site on 1-10-2004, 11-10-2004 and on 9-11-2004 at 3.00 pm and caused obstruction and resorted to demolition without notice and without following due procedure under HMC Act. Immediately, he filed writ petition No.20839 of 2004 and, this Court while disposing the same on
11-11-2004, directed that before seeking to demolish the structures, notice be given to the petitioner under Sections 452 and 636 of HMC Act. Pursuant to the direction,

the respondent issued notice under Section 452 of HMC Act on 18-11-2004 to the petitioner and the petitioner has submitted his explanation on 20-11-2004. On 27-11-2004 at about 2.30 p.m. the staff of the respondent again visited the site and resorted to demolition. Therefore, he prays to declare the action of the respondent in interfering with the construction of the building of petitioner as highly arbitrary and illegal and consequently direct the respondent to consider and dispose of the explanation dated 20-11-2004 of the petitioner in respect of building of the petitioner situated at Plot No.38-35-3 to
38-35-7, Ward No.42, Ranapratapnagar, Marripalem, Visakhapatnam.

Heard counsel for the petitioner and the learned Standing Counsel for the respondent.

The petitioner alleges that the Municipal Corporation of Visakhapatnam, has issued a notice under Section 452 of HMC Act stating that the petitioner has made constructions without leaving the set-backs and made constructions in deviation of the sanctioned plan. The show cause notice was issued by the Municipal Corporation of Visakhapatnam, on 18-11-2004 and the petitioner has also submitted his explanation on 20-11-2004. The apprehension of the petitioner is that the officials of the respondent are resorting to demolition of the house without even considering his explanation. Inasmuch as the petitioner had already submitted his explanation to the notice, issued by the respondent, it is appropriate to dispose of the writ petition with the following directions:

The respondent-Municipal Corporation of Visakhapatnam, is directed to consider the explanation submitted by the petitioner before taking steps to demolish the house or construction that has already been made. If already, they have considered the explanation of the petitioner and passed order, they can proceed further in the matter, in accordance with the decision they have taken.

This writ petition is accordingly disposed of. No costs.

01-12-2004

Stp

To

1. The Municipal Commissioner,

Municipal Corporation of Visakhapatnam,

Municipal Corporation Buildings, Visakhapatnam.

2. 2 CD copies.

THE HON'BLE MR JUSTICE N.V. RAMANA

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